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Federal Communications Commission  
Washington, D.C. 20554

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JAN 28 1998

FORWARDED TO [REDACTED]

97-182

DOCKET FILE COPY ORIGINAL

RECEIVED

The Honorable Tillie K. Fowler  
U.S. House of Representatives  
109 Cannon House Office Building  
Washington, D.C. 20515-0904

JAN 30 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Congresswoman Fowler:

Thank you for your letter dated December 22, 1997, on behalf of your constituents, Mayor Baron H. Asher, City of Daytona Beach, Florida, and Mayor William B. Latham, City of Jacksonville Beach, Florida, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their respective communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituents' letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

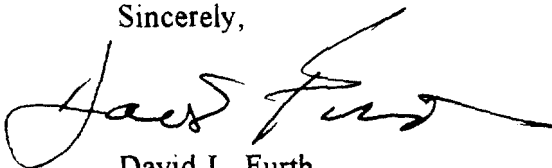
The Honorable Tillie K. Fowler

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David Furth", with a stylized, flowing script.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

**TILLIE K. FOWLER**

4TH DISTRICT, FLORIDA  
DEPUTY MAJORITY WHIP  
HOUSE PAGE BOARD  
(CHAIRMAN)

**NATIONAL SECURITY COMMITTEE**  
SUBCOMMITTEE ON MILITARY READINESS  
(VICE CHAIRMAN)  
SUBCOMMITTEE ON MILITARY INSTALLATIONS  
AND FACILITIES  
MERCHANT MARINE PANEL

**TRANSPORTATION AND  
INFRASTRUCTURE COMMITTEE**  
SUBCOMMITTEE ON SURFACE TRANSPORTATION  
SUBCOMMITTEE ON RAILROADS

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0904

December 22, 1997

REPLY TO:  
☐ 109 CANNON BUILDING  
WASHINGTON, DC 20515-0904  
(202) 225-2501  
FAX: (202) 225-9318  
FLORIDA DISTRICT OFFICES  
☐ 4452 HENDRICKS AVENUE  
JACKSONVILLE, FL 32207  
(904) 739-6600  
FAX: (904) 367-0066  
140 S. ATLANTIC AVENUE  
SUITE 204  
ORMOND BEACH, FL 32176  
(904) 672-0754  
FAX: (904) 673-8964

W TB  
97-182  
117

Mr. William Kennard, Chairman  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

Dear Chairman Kennard:

Enclosed are copies of letters that I recently received from two constituents, The Honorable Baron H. Asher, the Mayor of the City of Daytona Beach, Florida and The Honorable William B. Latham, the Mayor of the City of Jacksonville Beach, Florida. Both gentlemen raise very important issues regarding local and state zoning authority for cellular telephone and broadcast towers and the jurisdiction of the FCC over these matters. According to the House Subcommittee on Telecommunications, Trade, and Consumer Protection, the drafters of the legislation were sensitive to preserving the state's authority in these matters.

I would appreciate if you would clarify this important issue, giving both Mayors' concerns prompt consideration.

I look forward to receiving your response so that I can better address my constituents' concerns. Best regards.

Sincerely,

Tillie K. Fowler  
Member of Congress

TF:sm

cc: The Honorable W.J. Tauzin  
Chairman

Subcommittee on Telecommunications, Trade and Consumer Protection



# The CITY OF DAYTONA BEACH

"THE WORLD'S MOST FAMOUS BEACH"

NOV  
October 5, 1997

RECEIVED

Office of the Mayor

The Honorable Tillie K. Fowler  
United States House of Representatives  
413 Cannon House Office Building  
Washington, D.C. 20515

NOV 13 1997

Logged in 11/14  
Assign to  
Resp Code E 35002

Dear Representative Fowler:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

The Honorable Tillie K. Fowler  
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November 5, 1997

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man--over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so

The Honorable Tillie K. Fowler  
Page Three  
November 5, 1997

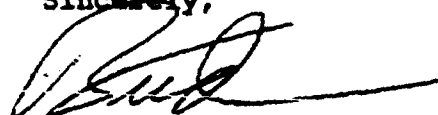
there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202/626-3194; Eileen Euggard at the National Association of Telecommunications Officers and Advisors, 703/506-3275; Robert Fogel at the National Association of Counties, 202/393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202/293-7330; and Cheryl Maynard at the American Planning Association, 202/872-0611. Feel free to call them if you have questions.

Sincerely,



Baron H. Asher  
Mayor

Copy List

Senator John McCain  
241 SROB  
Washington, DC 20510-0303

Senator Conrad Burns  
187 SDOB  
Washington, DC 20510-2603

Senator Kay Bailey Hutchison  
283 SROB  
Washington, DC 20510-4304

Senator Slade Gorton  
730 SHOB  
Washington, DC 20510-4701

Senator Dianne Feinstein  
331 SHOB  
Washington, DC 20510-0504

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

Representative W. J. Tauzin  
2183 RHOB  
Washington, DC 20515-1803

Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Representative John D. Dingell  
2328 RHOB  
Washington, DC 20515-2216

Representative Bob Goodlatte  
123 CHOB  
Washington, DC 20515-4606

Representative James Moran  
1214 LHOB  
Washington, DC 20515-4608

Representative Bart Stupak  
1410 LHOB  
Washington, DC 20515-2201

Representative Joe Barton  
2264 RHOB  
Washington, DC 20515-4306

Ms. Barrie Tabin  
Legislative Counsel  
National League of Cities  
1301 Pennsylvania Ave. NW, 6th Floor  
Washington, DC 20004

Ms. Eileen Huggard  
Executive Director  
NATO  
1650 Tysons Boulevard, Suite 200  
McLean, VA 22102-3915

Mr. Robert Fogel  
Associate Legislative Director  
National Association of Counties  
440 First Street, NW, 8th Floor  
Washington, DC 20001

Mr. Kevin McCarty  
Assistant Executive Director  
U.S. Conference of Mayors  
1620 Eye Street, 4th Floor  
Washington, DC 20006

Ms. Cheryl Maynard  
Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036

OFFICE OF THE  
**MAYOR**

CITY OF JACKSONVILLE BEACH, FLORIDA 32250 • 904/247-6270

NOV 12 1997

November 3rd, 1997

The Honorable Tillie Fowler  
U. S. House of Representatives  
District 4  
4152 Hendricks Avenue  
Jacksonville, FL 32207

Dear  Congressman Fowler,

I am writing you about the Federal Communications Commission and its attempt to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a local function.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is not attempting to preempt local zoning authority in three different rulemakings as follows:

1. **Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within the limits set by FCC. The FCC is attempting to use the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, and need not be bound by the stated reasons given by a municipality.

In addition, we cannot prevent citizens from mentioning their concerns in a public hearing. In its rulemaking, the FCC is saying that if a citizen raises radiation issues, this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed. This is true, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

2. **Cellular Towers - Moratoria:** The FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the number of these towers. Again, this violates the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.



Letter to the Honorable Tillie Fowler

November 3, 1997

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3. **Radio/TV Towers:** The FCC's proposed rule on radio and TV towers is wrong. It sets an artificial limit of 21 to 45 for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! Also all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when you consider broadcast towers are some of the tallest structures known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell, and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT97-197, MM Docket 97-182 and FA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U. S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,

  
William B. Latham  
Mayor

WBL:mjs

CC: George D. Forbes, City Manager  
Steve Lindorff, Planning & Development Director  
Bill Mann, Senior Planner